



U.S. Department of Justice
Antitrust Division

GK:SBK
60-6324-0010

Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20001
May 5, 1994

BY FEDERAL EXPRESS

The Honorable Cynthia M. Maleski
Insurance Commissioner
Commonwealth of Pennsylvania
Insurance Department
13th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Re: Independence Blue Cross's Prudent-Buyer Policy

Dear Commissioner Maleski:

This letter follows up on my November 30, 1993, letter in which we advised you of the Antitrust Division's plan to commence a civil investigation to obtain additional information necessary to assess the competitive effects of IBC's Prudent-Buyer policy and to determine whether it violates the federal antitrust laws. The investigation was opened in December. We have now had the opportunity to analyze carefully information and arguments relevant to whether the Prudent-Buyer policy is exempt from scrutiny under the federal antitrust laws by virtue of the so-called state-action doctrine, as explained, for example, in E.T.C. v. Ticor Title Ins. Co., 112 S.Ct. 2169 (1992).

We have concluded that a court would likely rule that the Prudent-Buyer policy is exempt from federal antitrust scrutiny and have consequently decided to close our investigation. We would like to emphasize that, in reaching this decision, we did not reach any judgment about whether the Prudent-Buyer policy, on balance, reduces or raises health-care costs in southeastern Pennsylvania. We currently have insufficient information to make such a judgment and, in view of our conclusion about the likely applicability of the state-action doctrine to the Prudent-Buyer policy, would likely encounter legal objections by IBC if we sought to compel production of the information. We should add, however, that your staff was very helpful to us in providing information relevant to our assessment of the state-action issue.

Termination of our investigation leaves with your Department the judgment whether Prudent Buyer has, in fact, reduced health-care costs for Pennsylvania consumers. We expect that your Department is reviewing the Prudent Buyer policy in response to requests that your Department reconsider its approval of Prudent Buyer and to IBC's request that it be allowed to employ Prudent Buyer beyond June 30, 1995, in light of information now available to your Department about the policy's actual effects. If your Department might find it useful, we would like to express our willingness to provide limited assistance in analyzing the effects of the policy.

Should anyone in your Department have any question about our decision or interest in consulting with us, please have them telephone me at (202)307-0997.

Sincerely yours,

Steven Kramer

Steven Kramer
Attorney